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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Dog Training Elite Franchising LLC,
10 Plaintiff,
11 v.
12 Unbound Ventures LLC, et al.,
13 Defendants.

No. CV-24-01861-PHX-SMM

ORDER

14 Before the Court is Defendants Condor Man Inc. and Neal Mestas' Motion to
15 Compel Arbitration and Motion to Stay Proceeding (Doc. 14), Defendants' Reply in
16 Support of that Motion (Doc. 19), Plaintiff's First Amended Complaint (Doc. 18), and the
17 parties' Joint Status Report (Doc. 22). The Court finds that Plaintiff's First Amended
18 Complaint is the operative complaint and denies Defendants' Motion to Compel
19 Arbitration and Stay Proceedings as moot.

20 **I. PROCEDURAL BACKGROUND**

21 Plaintiff, Dog Training Elite Franchising, LLC, brought a suit against several
22 Defendants, including Defendant CondorMan Inc. ("CondorMan") and Defendant Neal
23 Mestas ("Mestas"). (Doc. 1). The Complaint alleged, among other things, Civil
24 Conspiracy, which is the only claim brought against CondorMan and Mestas. (*Id.*) In
25 response to the filing of the Complaint, CondorMan and Mestas filed a Motion to Compel
26 Arbitration and Stay the Proceeding Pursuant to 9 U.S.C. § 4 of the Federal Arbitration
27 Act. (Doc. 14).

28 The parties filed a Stipulation with the Court requesting Plaintiff be given an

1 extension of time to file a Response to the Motion to Compel and Stay, which the Court
 2 granted. (Docs. 16; 17). However, instead of filing a Response, Plaintiff filed its First
 3 Amended Complaint. (Doc. 18). The deadline to file a Response passed, and Defendants
 4 filed a Reply in Support of their Motion. (Doc. 19).

5 Accordingly, the Court issued an Order directing the parties to file a Status Report
 6 to inform the Court why a Response was not filed. (Doc. 20). In that Status Report, Plaintiff
 7 states it was its understanding that it could file a First Amended Complaint as a matter of
 8 right, requiring the Defendants to file a new Motion to Compel and Stay based on the new
 9 operative Complaint. (Doc. 21). Meanwhile, Defendants' position is that 9 U.S.C. § 4
 10 requires this Court to rule on the Motion to Compel, notwithstanding the filing of an
 11 Amended Complaint. (Id.)

12 II. ANALYSIS

13 The Court now addresses the impasse. To support their position, Defendants point
 14 to the text of the Federal Arbitration Act. 9 U.S.C. § 4 ("The court shall hear the parties,
 15 and upon being satisfied that the making of the agreement for arbitration or the failure to
 16 comply therewith is not in issue, the court shall make an order directing the parties to
 17 proceed to arbitration in accordance with the terms of the agreement."). Defendants state
 18 that "the use of the word 'shall' 'creates an obligation impervious to judicial discretion.'"
 19 Smith v. Spizzirri, 601 U.S. 472, 476 (2024) (quoting Lexecon Inc. v. Milberg Weiss
 20 Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998)). Accordingly, Defendants argue, the
 21 filing of an Amended Complaint does not circumvent the Court's obligation to rule on the
 22 Motion. (Doc. 19 at 4). Conversely, Plaintiff characterizes the Motion to Compel and Stay
 23 as akin to a Rule 12(b) motion under the Federal Rules. (Doc. 21 at 2). After such a 12(b)
 24 motion, a plaintiff is granted two options: to respond to the motion or to correct deficiencies
 25 in a pleading. (Id.).

26 Under Federal Rule of Civil Procedure 15(a)(1)(B), a party may amend its pleading
 27 once as a matter of right within "21 days after service of a responsive pleading or 21 days
 28 after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P.

1 15(a)(1)(B).

2 The Ninth Circuit has upheld district court orders granting a motion to compel
 3 arbitration brought under Rule 12(b)(3). See, e.g., Balen v. Holland Am. Line Inc., 583
 4 F.3d 647, 652 (9th Cir. 2009). Other Circuit Courts have held similarly. See, e.g., Grasty
 5 v. Colorado Tech. Univ., 599 F. App'x 596, 597 (7th Cir. 2015) (concluding that “[m]otions

6 to compel arbitration ... are brought properly under Federal Rule of Civil Procedure
 7 12(b)(3)”). Finally, other courts in this Circuit have ruled similarly. Cancer Ctr. Assocs.
 8 for Research and Excellence, Inc. v. Phila. Ins. Cos., No. 1:15-CV-00084 LJO MJS, 2015
 9 WL 1766938, at *2 (E.D. Cal. 2015) (“[C]ourts have held that a Rule 12(b)(1) motion to
 10 dismiss for lack of subject matter jurisdiction ‘is a procedurally sufficient mechanism to
 11 enforce [an] [a]rbitration [p]rovision.’”); Coup v. Scottsdale Plaza Resort, LLC, 823 F.
 12 Supp. 2d 931, 938 (D. Ariz. 2011) (motion to compel arbitration may be properly brought
 13 pursuant to Rule 12(b)(1) or 12(b)(6)); Cedars-Sinai Med. Ctr. v. Global Excel Mgmt.,
 14 Inc., No. CV 09-3627, 2010 WL 5572079, at *2 (C.D. Cal. 2010); Lemberg v. LuLaRoe,
 15 LLC, No. EDCV1702102ABSHKX, 2018 WL 6927836. at * 3 (C.D. Cal. 2018).

16 The Court follows the holding in Lemberg, which found that while “courts may
 17 disagree as to whether a motion to compel arbitration constitutes a motion pursuant to
 18 Rules 12(b)(1), 12(b)(3), or 12(b)(6), courts generally agree that such a motion is a Rule
 19 12(b) motion.” Lemberg, 2018 WL 6927836 at *3. Therefore, while a Motion to Compel
 20 may not fall directly into one of Rule 12(b)’s subsections, it is a responsive pleading, which,
 21 under Rule 15(a)(1)(B), grants Plaintiff leave to amend as a matter of right. See, e.g., id.;
 22 see also, Armendariz v. Ace Cash Express, No. 3:13-CV-00590-BR, 2013 WL 3791438,
 23 at *1 (D. Or. July 19, 2013) (finding that a motion to compel arbitration “suffices as a
 24 ‘responsive pleading’ to Plaintiff’s Complaint or as an unenumerated motion under Rule
 25 12(b), and, therefore, Plaintiff was permitted to file a First Amended Complaint pursuant
 to Rule 15(a)(1)(B) without first obtaining leave of Court or consent of Defendant.”).

26 Further, the Supreme Court has long held that “Rule 15(a) declares that leave to
 27 amend shall be freely given when justice so requires; this mandate is to be heeded.” Foman
 28 v. Davis, 371 U.S. 178, 182 (1962). With this legal principle in mind, the Court holds that

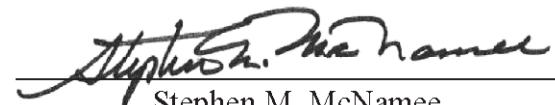
1 Plaintiff's FAC is the operative complaint in this action.

2 Because Defendants CondorMan Inc. and Neal Mestas' Motion to Compel
3 Arbitration is targeted at a previous iteration of the Complaint in this action, the Motion to
4 Compel is denied as moot and thus if Defendants seek to compel arbitration, Defendants
5 should file a Motion to Compel Arbitration based upon Plaintiff's FAC.

6 Accordingly,

7 **IT IS ORDERED** denying the Motion to Compel as moot. (Doc. 14).

8 Dated this 26th day of March, 2025.

10 
11 Stephen M. McNamee
12 Senior United States District Judge

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